

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HENRICO COUNTY FOR THE Henrico County 911 Training Center PC No. 2010-4376

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Henrico County, for the purpose of resolving certain violations of the State Water Control Law and the applicable Regulations

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 *et seq.*)
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.
6. "Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline. The facility, called the Henrico County 911 Training Center, is located at 7701 East Parham Road, Henrico, Virginia.
7. "County" means the County of Henrico, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.34:14.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
10. "Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Rocky Branch" means surface waters and is "state waters" under State Water Control Law and is located in the Upham Brook watershed, James River Basin. During the 2008 305(b)/303(d) cycle the watershed was assessed as not supporting of the Recreation Use due to E. coli violations; therefore it was considered Category 5A. The tributaries were fully supporting of the Aquatic Life Use, fully supporting with observed effects of the fish Consumption Use due to the VDH fish consumption advisory for kepone, and were not assessed for the Wildlife Use. The bacterial TMDL was subsequently approved by the EPA on 7/24/2008 and by the SWCB on 4/28/2009. Due to the intermittent nature of the creek, Rocky Branch is considered a Tier 1 waterbody. It is not currently proposed for designation as a Tier 3 Exceptional Water
14. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.

16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The County, is an Operator of a 250 gallon aboveground storage tank which is located at the Facility. The aboveground storage tank contains oil, in the form of diesel fuel, which is used for heating purposes and to run the emergency generator for the Facility. The aboveground storage tank is exempt from certain AST requirements, pursuant to 9 VAC 25-91-30.
2. On February 2, 2010, the Department received notification of a discharge of an unknown amount of diesel fuel, in Rocky Branch, a state water, located along Parham Road in Henrico County.
3. On February 2, 2010, DEQ staff responded to the report and investigated the discharge. The Henrico County Environmental Coordinator, Henrico Fire and Emergency Management Services, and the Engineering and Environmental Services Division of Public Works (EESD) had immediately responded to the reported discharge of diesel fuel. A Henrico County contractor, mobilized to the Site about 1 PM that day. DEQ staff observed a sheen upon and discoloration of Rocky Branch, and the County and its contractor performing cleanup and removal activities by placing booms, absorbent pads and using vacuum trucks to remove the diesel fuel from state waters. The discharged diesel fuel was traced back to the Facility.
4. The discharge was reported by the County to be caused by the overfilling of a 250 gallon "day" tank, due to a faulty float switch. The diesel fuel had migrated through secondary containment back to the underground storage tank sumps, filling the sumps, then flowed subsurface through the parking lot via french drains down gradient to a storm water drop inlet which discharges to Rocky Branch.
5. On February 4, 2010, DEQ received notification of a fish kill in Rocky Branch. DEQ staff responded to the report on February 5, 2010 and conducted an investigation of Rocky Branch. DEQ staff found that the fish kill extended approximately 0.3 mile and counted 642 dead fish.

6. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
7. On March 3, 2010, the Department issued Notice of Violation No. 10-03-PRO-501 to Henrico County for a discharge of oil to state waters which resulted in a sheen upon and discoloration of state waters and for the resulting fish kill.
8. On March 24, 2010 and April 15, 2010, DEQ staff met with representatives of Henrico County and their consultants to discuss the discharge, the emergency response, spill control and clean-up, and future actions. At the April 15, 2010 meeting, the County submitted a memo summarizing the discharge and current status of the incident. DEQ staff requested additional information regarding the method used to calculate the diesel fuel recovered during the clean-up.
9. On April 23, 2010, Henrico County notified DEQ that approximately 5,602 gallons of diesel fuel was discharged and 5,477.4 gallons were recovered. Approximately 124.6 gallons remain in the environment.
10. On July 15, 2010, DEQ staff received the "Initial Abatement Report/Site Characterization Report" submitted by the County's consultant, which described the cause, extent and impact of the oil discharge from the Facility, the remediation activities, restoration of the Site by June 21, 2010, and closure of the Site by June 23, 2010.
11. Henrico County has taken steps to prevent an occurrence of a similar unpermitted discharge, by temporarily installing two above ground storage tanks to use while the aboveground and underground storage tank system is being upgraded. The upgrade includes a new alarm system and procedures for notification of any system malfunctions. The County is also updating the County wide Standard Operating Procedures to address equipment malfunction(s) and the County's response.
12. Based on the results of the February 2, 2010 diesel fuel discharge investigation, the February 5, 2010 fish kill investigation, the April 15, 2010 memo and April 23, 2010 documentation submitted by Henrico County, and the July 15, 2010 Initial Abatement Report/Site Characterization Report, the Board concludes that Henrico County has violated the Va. Code § 62.1-44.34:18, by discharging oil, in the form of diesel fuel, into state waters causing a sheen, discoloration, and the resulting fish kill as described in paragraphs C(3) through C(5), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ **62.1-44.34:20** and upon consideration of Va. Code § 10.1-1186.2, the Board orders Henrico County, and Henrico County agrees:

1. To perform the actions described in Appendix A of this Order; and
2. To a civil charge of \$84,030 in settlement of the violations cited in this Order, to be paid as follows:
 - a. Henrico County shall pay \$21,008 of the civil charge within 30 days of the effective date of this Order, payable to the "Treasurer of Virginia", and
 - i. Reimburse DEQ \$589.08 for costs incurred in investigating the oil discharge, within 30 days of the effective date of the Order, payable to the "Treasurer of Virginia", and
 - ii. Henrico County Shall pay \$386.82 for the fish kill replacement costs, payable to the "Department of Game and Inland Fisheries".

Payment shall be made by **separate**, certified check[s], money order[s] or cashier's check[s] and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Henrico County shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF); that the payment of the fish replacement costs is for the Department of Game and Inland Fisheries; and, that payment of the fish kill investigative costs is for reimbursement of DEQ expenditures.

- b. **Henrico County** shall satisfy \$63,022 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to **Henrico County** shall not be less than the amount set forth in Paragraph D.2.b. If it is, **Henrico County** shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost"

means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

- d. By signing this Order **Henrico County** certifies that it has not commenced performance of the SEP.
- e. **Henrico County** acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by **Henrico County** to a third party, shall not relieve **Henrico County** of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, **Henrico County** shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the **Henrico County**; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. Should the Department determine that **Henrico County** has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify **Henrico County** in writing. Within 30 days of being notified, **Henrico County** shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

- 1. The Board may modify, rewrite, or amend this Order with the consent of Henrico County for good cause shown by Henrico County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
- 2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Henrico County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Henrico County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Henrico County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Henrico County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Henrico County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Henrico County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Henrico County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Henrico County intends to

assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Henrico County. Nevertheless, Henrico County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Henrico County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Henrico County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Henrico County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Henrico County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Henrico County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Henrico County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Henrico County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Henrico County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of DECEMBER, 2010


Michael P. Murphy, Regional Director
Department of Environmental Quality

Henrico County voluntarily agrees to the issuance of this Order.

Date: 10/6/10 By: [Signature], County Manager
(Person) (Title)
Henrico County

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 6th day of October, 2010, by Virgil R. Hazlett who is County Manager of Henrico County.

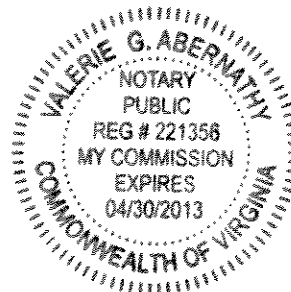
[Signature]
Notary Public

APPROVED AS TO FORM
[Signature]
Asst. COUNTY ATTORNEY

221356
Registration No.

My commission expires: 4/30/2013

Notary seal:



APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, Henrico County shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix.

1. The SEP to be performed by Henrico County is to upgrade three petroleum tank systems in the County's administration complex to reduce accidental releases and to minimize the size of a release due to potential equipment failure. In each system a large underground storage tank ("UST") feeds a much smaller above ground storage tank ("AST day tank") that holds the petroleum product for use by a backup electric generator. The County proposes to install an Automatic Tank Gauging (ATG) System that uses sensor probes installed inside the fuel storage tanks and inside the sumps to detect leaks originating from the tanks and piping via the sensor probes. The ATG System includes a computer console to continuously monitor for leaks. If a leak is detected, the console will automatically notify responsible County personnel via a paging system. The installation of the ATG System would notify County personnel to take immediate actions to prevent any release, or to significantly reduce the magnitude of a release. In addition, the County proposes to upgrade the level-control equipment in each system's AST day tank to add critical shutoff.
2. The SEP shall be completed by no later than **January 10, 2012**.
3. Henrico County shall submit progress reports on the SEP on a **monthly** basis, due the **10th day** of each month.
4. Henrico County shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Henrico County shall submit the final report and certification to the Department within **30 days** from completion of the SEP.
5. If the SEP has not or cannot be completed as described in the Order, Henrico County shall notify DEQ in writing no later than **30 days** of discovery. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
6. Henrico County hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Henrico County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within **30 days** of the project

completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Henrico County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060